

Universal Belt, Inc.; David Seror, Trustee in Bankruptcy and Southwest District Council, International Ladies' Garment Workers' Union, AFL-CIO. Case 21-CA-26688

July 31, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND OVIATT

Upon a charge filed by the Union, Southwest District Council, International Ladies' Garment Workers' Union, AFL-CIO, on March 14, 1989, the General Counsel of the National Labor Relations Board issued a complaint on April 20, 1989, against Universal Belt, Inc. (Universal) alleging violations of Section 8(a)(5) and (1) of the National Labor Relations Act. Universal filed a May 24, 1989 answer to the complaint, and on June 2, 1989, filed an amended answer. Thereafter, the General Counsel issued an amended complaint on April 18, 1991, against Universal and David Seror, Trustee in Bankruptcy.¹ Although properly served copies of the charge and amended complaint, neither Universal nor Seror has filed an answer to the amended complaint.

On May 23, 1991, the General Counsel filed a Motion for Summary Judgment. On May 31, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. No response was filed. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its Motion for Summary Judgment, the General Counsel contends that no answer has been filed to the April 18, 1991 amended complaint and that under Section 102.20 of the Board's Rules and Regulations, the Board should find that the allegations of the amended complaint are deemed admitted and found to be true, and should issue an order based on those findings.

We find summary judgment, as moved, is not proper under the circumstances of this case. In so finding, we note that the motion filed by the General Counsel is based entirely on the amended complaint dated April 18, 1991. The General Counsel's motion does not contain any reference to Universal's answer or amended answer to the original complaint in this action.

The record shows that the Regional Director issued a complaint in this matter April 20, 1989, alleging that Universal changed the terms and conditions of employment of its employees in violation of Section 8(a)(5) and (1) of the Act by failing to remit trust fund contributions to the various trust funds as required by the terms of the expired 1986-1989 collective-bargaining agreement with the Union. Universal filed a May 24, 1989 answer to the complaint in which it denied all material allegations in the complaint, and specifically denied allegations that it engaged in conduct constituting an unfair labor practice within the meaning of Section 8(a)(5) and (1) of the Act. On June 2, 1989, Universal filed an amended answer to the complaint which denies that Universal changed the terms and conditions of employees, and which contends that Universal "offered to remit funds to the trust fund for prior contributions, but such offer was unacceptable to and rejected by the said Union." By its denial in its amended answer, Universal has raised a litigable issue. Universal's amended answer has never been withdrawn.

On July 28, 1989, the General Counsel, having received notice that Universal filed a petition in bankruptcy and that an interim trustee had been appointed, moved to continue the hearing indefinitely so that the General Counsel could amend the complaint to include the regular trustee in bankruptcy as a party once that trustee was so named. The General Counsel's motion was granted, and on April 18, 1991, the Regional Director issued an amended complaint in this case which differs from the original complaint only in that it additionally alleges that about June 26, 1989, Universal filed a voluntary petition under Chapter 7 of the Bankruptcy Code, that since on or about June 5, 1990, David Seror had been designated the trustee in bankruptcy of Universal, and that David Seror is the same entity, or an alter ego of, Universal.

As the amended complaint differs from the original complaint only by noting Universal's changing status in bankruptcy, Universal has denied in its amended answer to the complaint all the violations alleged in the amended complaint. The entrance of Seror as trustee in bankruptcy has no effect on the identity of Universal, the respondent originally charged in this proceeding, and hence has no effect on the amended answer already filed by Universal. Therefore, because Universal's timely filed amended answer to the complaint responds to all substantive issues raised by the amended complaint, and in the absence of any explanation that would warrant disregarding the amended answer, we find it inappropriate to grant the General Counsel's Motion for Summary Judgment. *James Michael Shull*, 291 NLRB 342 (1988).

¹ On June 26, 1989, Universal filed a voluntary petition under Chapter 7 of the Bankruptcy Code. On July 28, 1989, the General Counsel moved that the hearing be continued indefinitely so that once the regular trustee is named, the General Counsel could amend the complaint to include the trustee as a party. The General Counsel's Motion for Continuance was granted on August 1, 1989.

ORDER

It is ordered that the General Counsel's Motion for Summary Judgment is denied.

IT IS FURTHER ORDERED that these proceedings are remanded to the Regional Director for Region 21 for further appropriate action.